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THEODORE KRAMER and
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8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN MATEO

11 **Six4Three**, a Delaware limited liability
12 company,

13 Plaintiff;

14 v.

15 **Facebook, Inc.**, a Delaware corporation;
16 **Mark Zuckerberg**, an individual;
17 **Christopher Cox**, an individual; **Javier**
18 **Olivan**, an individual; **Samuel Lessin**, an
individual; **Michael Vernal**, an individual;
Ilya Sukhar, an individual; and **Does 1-50**,
inclusive,

19 Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V.
Raymond Swope, Dep't 23

**THEODORE KRAMER AND THOMAS
SCARAMELLINO'S JOINDER IN *EX PARTE*
APPLICATION TO STAY DISCOVERY**

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21 CIV533328
J01
Joinder
22 1816827



FILED
SAN MATEO COUNTY

MAY 08 2019

Clerk of the Superior Court

DEPUTY CLERK

1 Third Parties Theodore Kramer and Thomas Scaramellino join in the *ex parte* application
2 filed on May 6, 2019 by Murphy, Pearson, Bradley & Feeney *et al.* for a stay for the reasons set
3 forth in that application and for the following reasons as well.

4 **I. NO DISCOVERY SHOULD OCCUR WHILE THE PLAINTIFF LACKS REPRESENTATION.**

5 This Court recently permitted all counsel for Plaintiff to withdraw from representation;
6 no new counsel has yet been appointed by Plaintiff. Yet, purportedly through service on
7 Plaintiff's principal Mr. Kramer, Defendants issued new discovery requests to Plaintiff.
8 Declaration of Theodore Kramer, submitted herewith ("Kramer Decl."), Exhs. 3 and 4. Without
9 counsel, Plaintiff cannot respond to the discovery requests recently issued by the Defendants,
10 whether by objection or motion, given its lack of representation. For the same reason, Plaintiff
11 has no ability to meet and confer, oppose or otherwise respond to the discovery protocol
12 proposed by Defendants, including opposing the protocol in oral argument and briefing before
13 the Court. Further, Plaintiff has no ability currently to seek a writ or appeal the decisions of this
14 Court regarding such discovery while it has no representation. Any decisions made by the Court
15 while Plaintiff lacks counsel, especially those pertaining to production of attorney-client
16 privileged documents and attorney work-product cannot be remedied after the fact. For the
17 foregoing reasons, a stay must be granted until Plaintiff secures representation.

18 **II. NO PROTECTIVE ORDER VIOLATIONS TOOK PLACE; THEREFORE,**
19 **NO FURTHER DISCOVERY IS WARRANTED PENDING THE APPEALS.**

20 According to Facebook's own counsel, in a letter from December of last year not
21 previously disclosed to this Court by Facebook:

22 It is wholly exceptional for the Serjeant at Arms to be deployed to attend a private
23 citizen at his hotel and require him to hand over documents to a Committee of the
24 House. More so for that Order to be made and served in circumstances where the
25 Committee was aware that the documents had been sealed by Orders of the
26 California Court, and Mr Kramer, a US citizen bound by those Court Orders, was
27 clear that to hand them over would be a breach of the Orders of that Court for
28 which he would be answerable.

26 Kramer Decl., Exh. 1.

27 In another letter from a few days earlier, Facebook's counsel states, "We understand that
28 the DCMS Committee decided at 11am on 21 November 2018 to report Mr Kramer's breach of

1 its order to the House, and that Mr Collins subsequently did so. As far as we are aware, no
2 further steps have been taken in respect of the report.” Id. Why has Facebook failed to disclose
3 these communications to the Court notwithstanding its obligation to do so?

4 These communications are consistent with Mr. Kramer’s description of events in London,
5 confirming that the order to which Mr. Kramer was subject was, in Facebook’s counsel’s own
6 words, “wholly exceptional,” and further that Mr. Kramer was cited for violations of an order of
7 the House of Commons, which Facebook’s own counsel admits in the letter. Cal. Bus. & Prof.
8 Code § 6068(d) (2019); Cal. Rule of Prof. Conduct, Rule 3.3. In other words, the disclosures
9 were made under lawful authority as allowed by Section 16 of the Protective Order. As Mr.
10 Collins stated, “I can confirm as well that the committee only had access to the documents that
11 had been sealed by the court in San Mateo relating to the Six4Three case after you complied with
12 the order to produce them.” Id. This statement by Mr. Collins directly contradicts the “evidence”
13 Facebook presented to the Court that Plaintiff disclosed Facebook’s confidential information
14 even prior to the events in late November in the United Kingdom – evidence which served as a
15 basis for the Court’s grant of the crime-fraud exception.

16 Because there were no violations of the Protective Order and Six4Three complied with
17 Section 16 to the letter, no further discovery is warranted, and a stay should issue.

18 **III. DEFENDANTS CONTINUED FAILURE TO INITIATE A PROCEDURALLY PROPER,**
19 **SUBSTANTIVE PROCEEDING, FURTHER SUPPORTS THE ISSUANCE OF A STAY ORDER.**


20 The proceedings over the last several months purportedly stem from alleged violations of
21 the Protective Order and yet no ruling interpreting the Protective Order has been made.
22 Nonetheless, Defendants have alleged all the facts and law of a civil or criminal conspiracy and
23 are proceeding with prosecuting their conspiracy allegations seemingly with the approval of the
24 Court. This is contrary to law. In light of the Court’s own admission that the requisite findings for
25 an Order to Show Cause for sanctions and contempt are present here, Defendants should be
26 required to follow proper procedure on those threatened proceedings. As the alleged contempt
27 did not occur in the courthouse, it is properly characterized as indirect contempt. Koehler v.
28 Superior Court, 181 Cal.App.4th 1153, 1159 (2010). Under Koehler, an OSC for sanctions and/or

1 contempt can be ordered by the Court or requested by Facebook. Id. at 1169-1171. Without such
2 an OSC or other proper process¹, which is necessary to provide the responsive parties the
3 opportunity to defend themselves, to ensure due process, and to prepare for the required
4 evidentiary hearing and record, discovery cannot proceed, and a stay should be ordered.

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6 Dated: May 8, 2019

Respectfully submitted,
COMPUTERLAW GROUP LLP

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8 By:


Jack Russo
Christopher Sargent

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10 Attorneys for Third Parties
THEODORE KRAMER and
THOMAS SCARAMELLINO

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24 ¹ Alternatively, Defendants may seek to file a new complaint against any parties Defendants
25 allege to have participated in any alleged conspiracy. To the extent Defendants seek to name
26 members of Plaintiff's legal team as defendants in that complaint, Defendants are required to
27 adhere strictly to California Civil Code Section 1714.10. The California legislature and courts
28 have set forth required procedures, such as those specified in Section 1714.10 or Koehler
precisely to prevent the very situation in which the parties and the Court now find themselves.
Defendants cannot be permitted to continue to prosecute their conspiracy allegations in violation
of California law.